

as a secondary tie breaker, although the commenters suggested it as a primary tie breaker, because an applicant with many pending applications merely has a greater possibility of obtaining more stations, whereas an applicant with more permits and licenses has already achieved that goal.

74. As a final tie breaker for full service stations we will impose mandatory time sharing. In so doing, we recognize that this option is very unpopular. Most commenters believe that time sharing is confusing to listeners, prevents consistency in programming, and is especially difficult for organizations that do not share the same ideologies.⁶⁰ We are not unsympathetic to the points raised by these commenters. Even some of these commenters, however, recognize that time sharing may be useful as a settlement tool or as a tie breaker of last resort. Although we are not adopting a formal settlement period, so as not to unduly delay the award of permits in cases where the parties are not interested in settlement, we stress that parties are free to settle at any time during the process. Our general rules for broadcast settlements will apply, including the requirement that the settling parties certify that they have not received consideration in excess of their legitimate and prudent expenses. See 47 C.F.R. § 73.3525. We are not adopting the suggestion of licensing two stations over one, in the event of a three-way tie. We see this suggestion as one best considered by the applicants themselves as part of any settlement negotiations that they may undertake voluntarily.

D. Attribution Issues for NCE Point System

75. Several of the factors in the NCE point system including local diversity, localism, and the tie breakers, are based on whether the applicant also has interests in other broadcast stations. As we discussed in the Further Notice, the methods for determining control of commercial broadcast applicants are not always applicable to noncommercial applicants, who are often non-stock corporations, governed by a frequently changing board of directors who serve voluntarily or by appointment. At present, our rules establish attribution policies for commercial stations, but not for noncommercial educational stations, because attribution has generally been considered only in the context of ownership limits, and there are no limits on the number of NCE stations that any one entity can own.⁶¹ There was little discussion of this point in the comments. We have decided, to the extent possible, to base noncommercial attribution standards for consideration in applying an NCE point system on the commercial framework, as well as on the policies that have been used in the educational ITFS service, with several adjustments to account for structural differences in NCE organizations.

⁶⁰ E.g. Reply Comments of Center for Media Education, et al. at 18-19..

⁶¹ See 47 C.F.R. § 73.3555, note 2. See also Notice of Inquiry, MM Docket No. 89-77, Transfers of Non-Stock Entities, 4 FCC Rcd 3403 (1989) (asking at what point we should consider a transfer of control to have occurred in non-stock organizations for purpose of requiring prior Commission consent).

76. In the ITFS point system, we looked to the composition of an entity's governing board to determine control. Memorandum Opinion and Order, ITFS, MM Docket No. 83-523, 59 RR 2d 1355 (1986). In that service, we did not specifically address changes that might occur in the governing board. We did, however, consider that local and nonlocal organizations might jointly form new corporations, and that it would only be appropriate for such organizations to receive points for localism if the local entity had the majority of representation on the board and if the board's officers were appointed by the board itself and none of the officers were affiliated with a nonlocal participant.

77. To determine an NCE applicant's other interests, for purposes of applying an NCE point system, we will attribute the interests of the applicant, its parent, and its subsidiaries, their officers and members of their governing boards. This standard is similar to commercial attribution standards in which directors, officers, and voting stockholders in a commercial entity have attributable interests. See 47 C.F.R. § 73.3555 note 2. Thus, even if an NCE organization and its parent organization do not have any other broadcast interests, we would also look to the interests of officers and directors, as we do for commercial applicants. For example, if the president of an applicant for a new NCE television station also serves on the board of another local television station, or if a board member of an NCE radio applicant has attributable interests in a nearby commercial radio station, those other stations would be attributed for determining whether the applicant qualifies for a local diversity credit in the NCE point system.

78. So that points awarded to an applicant based on the composition of its governing board will remain meaningful, despite anticipated board changes, we will award points only to organizations whose own documents, (e.g. by-laws, constitution, or their equivalent) establish requirements for maintaining the characteristics of the board for which it claims credit. For example, we would grant credits to an organization seeking a credit for diversity, if its governing documents limit the degree to which incoming Board members can have interests in other local stations. While we understand that NCE groups cannot control the resignation of Board members, we expect that they will act quickly to replace Board members to maintain characteristics of the Board for which credit was awarded. We understand that most organizations do not have such provisions in their current governing documents, and that amending the documents to provide this safeguard may require a vote by the organization's members. Accordingly, we will provide a period for amendment, as discussed in paragraph 91 infra.

79. We also recognize, as we have in commercial broadcasting, that people or entities not represented on the Board of Directors may nevertheless exert significant influence over an NCE licensee by supplying substantial funding and programming to a station. We are already receiving applications for NCE stations, disclosing that, pursuant to an agreement between the applicant and an existing broadcast licensee, the existing licensee will finance construction of the new station in exchange for a commitment to air a majority of that licensee's programming. Accordingly, consistent with the attribution standards applied to

commercial broadcasters, our point system will attribute the interests of entities providing more than 33 percent of equity and/or debt, and (1) who supply more than 15% of the station's weekly programming or (2) who have attributable interests in media in the same market. See Report and Order, Attribution of Broadcast and Cable Interests, FCC 99-207 (Aug. 5, 1999). We believe that this method of attribution is compatible with and should not have any impact on traditional NCE funding and programming relationships, because traditional sources of NCE funding (such as the Corporation for Public Broadcasting, financial institutions, and major donors) and of NCE programming, (such as the Public Broadcasting Service) are not generally broadcast licensees and thus will have no broadcast interests to attribute.

E. Delegated Authority

80. By statute, only Administrative Law Judges, individual Commissioners, and the Commission are permitted to apply a point system. 47 U.S.C. § 155(c)(1); See Further Notice, n. 22. This is because a point system is technically considered a type of simplified hearing. We believe that it would be preferable and more streamlined to delegate responsibility for an NCE point system to the staff, and will seek appropriate legislation to do so. We secured similar legislation permitting staff consideration of ITFS point system proceedings. Id. See also ITFS Processing Issues, 11 FCC Rcd 12,380 (1996). So as to not further delay this process, the staff is directed to refer these cases to the Commission until legislation can be introduced and acted upon. If we receive legislative authority, we will delegate responsibility to process applications using the NCE point system to the Mass Media Bureau.

F. Application Procedures and Post-Award Requirements

81. The Further Notice asked commenters to address application procedures and requirements that prevailing applicants must meet after award of the permit. We especially asked for suggestions on how to prevent speculation and abuse in NCE licensing. Among possibilities presented for comment were replacing the current A/B cut-off method, now used to receive applications, with periodic filing windows, and establishing a holding period during which applicants would be required to maintain the characteristics identified in their applications.

1. Potential for Abuse

82. Commenters believe that speculation is a problem in NCE broadcasting.⁶² Among the factors that commenters believe lead to the potential for abuse are the lack of multiple ownership rules restricting the numbers of NCE applications that can be filed, a liberal

⁶² E.g., Comments of CSN International at 3; Comments of Alaska Public Telecommunications et.al. at 5-6; Comments of Educational Information Corporation at 14-16.

main studio waiver policy for NCE stations, the filing freeze on (and now auction of) commercial channels which makes NCE the only new broadcast frequencies available, and the lack of filing fees and regulatory fees for NCE stations.⁶³

83. A major concern was the filing of "copy cat" or "me too" applications in which groups become interested in applying for a radio station in a particular area only after learning that another applicant has applied.⁶⁴ Sometimes these "copy cat" applicants photocopy the first applicant's information and use it as their own. Commenters state that some applicants apply for the same channel as the first applicant even if there are several alternatives available in the same vicinity. Another concern was that, without the scrutiny of traditional hearings, applicants who are not truly educational might try to pass as NCE organizations.⁶⁵ Similarly there was a concern that applicants might claim credits for which they did not qualify, or would alter the characteristics for which they received credits shortly after the permit issued.⁶⁶ Accordingly, the commenters support various options for limiting speculation at the application stage, and for ensuring that successful applicants live up to their promises.

2. Filing Windows to Replace A/B Cut Off

84. We will adopt a filing window process for accepting NCE applications, both for full service stations and for FM translators. Under current procedures, when we receive an NCE application we issue an "A cut off" public notice announcing its acceptance. The public notice triggers the filing of competing applications by announcing a date certain by which any such applications are due (commonly referred to as "B" applications). Ideally, this process would notify others already considering similar proposals to file an application quickly, or lose that opportunity. In practice, however, the process has apparently led to speculation, in which "B" applicants with no prior interest in an area file applications in response to numerous "A" cut off notices. In the Further Notice we asked whether we should replace the current procedures with a window filing system. Under a window system, the Commission would periodically announce a window during which all applications could be filed. Thus, Commission action, rather than a specific application, would open a window in which all NCE applications could be filed. Applicants might thus

⁶³ Comments of Station Resource Group at 3.

⁶⁴ E.g. Comments of West Coast Public Radio, et al. at 15; Comments of Minnesota Public Radio at 3; Comments of American Family Association at 2-3.

⁶⁵ E.g. Comments of Educational Information Corporation at 17-19.

⁶⁶ E.g. Comments of National Public Radio, et al. at 28-30; Comments of Alaska Public Telecommunications, et al. at 12-14.

file at the end of the window so as to lessen the potential for "copy cat" proposals. For commercial broadcast applications, we have replaced the previous A/B cut off system with filing windows. See Competitive Bidding supra.

85. The commenters support a move to a window filing system in the NCE service. According to commenters, cut off lists have become "shopping lists" for aggressive speculators, who monitor the lists to determine where to file next.⁶⁷ As noted earlier, Alaska Public Telecommunications indicates that over 400 of our current applications involve 15 to 20 applicants who have overfiled against each other in virtually every state. To further reduce the possibility of speculation, commenters suggest that we place a limit on the number of applications that an applicant can file within one window and within a year. West Coast Public Radio suggests that applicants be limited to five applications per window and up to a maximum of ten in a calendar year.

86. Upon consideration of the comments we conclude that it will serve the public interest to adopt a window filing system for NCE applications. We delegate to the staff the decision of when to open windows, and the length of advance notice given before a window opens, and other details concerning implementation of an NCE window filing system. We will not adopt the suggestion that applicants be limited in the number of applications per window or calendar year. We believe that the criteria in the point system established herein, combined with window filing procedures, should be sufficient to ameliorate the filing of large numbers of mutually exclusive applications by speculative, barely qualified, applicants. If the number of mutually exclusive applications received under the new system exceeds our expectation, we reserve the right to establish by public notice a limit on the number of filings per applicant in a given period.

87. At the end of a filing window we will review the applications only to determine which are mutually exclusive, and issue a public notice identifying applications that are mutually exclusive. Under the new window filing procedures, the specific facilities proposed in applications filed during a filing window will receive cut-off protection, and will be protected pursuant to our existing interference rules, as of the date of the closing of the window filing period. After the closing date of the filing window, no applications (such as minor modification applications) may be filed that would conflict with the applications filed during the window. The staff may, in its discretion, temporarily freeze the filing of minor modification applications during the window to limit the number of potentially conflicting applications. Applications for minor modifications to existing stations are not limited to filing within windows, and would best be filed at any time before a window opens for major changes and new stations. The window filing procedures adopted herein do not change the acceptability criteria for noncommercial educational applicants.

⁶⁷ Comments of Station Resource Group at 7; Comments of Pensacola Christian College.

3. Documentation/Petitions to Deny

88. A number of commenters request that we require applicants to file documentation of their claimed points, to enable applicants to verify or dispute claims made in competing proposals and file petitions to deny. According to West Coast Public Radio, the Commission will thus be able to rely on certification check off boxes without sifting through the documentation, but interested parties would have the opportunity to submit meaningful comments. NPR suggests that within 30 days of application, the applicant should supply its articles of incorporation, bylaws, audited financial statement, names and addresses of parent entities, officers and directors, sources of proposed funding, description of local elements on the board, lists of their other stations and pending applications, and engineering support for their claims of fair distribution. Alaska Public Telecommunications identifies additional types of documents that might be useful. For example, it suggests that applicants claiming to be established local organizations should document the length of their connection with the local area, such as with a certification by the Secretary of State where the organization was established. For applicants who are part of state-wide plans, this commenter would have the applicant provide a copy of the plan or similar documentation of participation. NPR states that applicants would then file petitions to deny, with the FCC looking only at the petitions against the selectee.

89. We agree with the commenters that, while the application should be a simple one in which the Commission can rely on certifications, competing applicants should be able to verify that competing applicants qualify for the points claimed, and that the Commission should have access to the documentation for purposes of random audits. We have revised several of our application forms in this manner as a result of our Streamlining proceeding, and will institute random audits to verify the accuracy of the certifications. Likewise, we direct the staff to design a new certification-based NCE application form. The form should identify appropriate documentation that must be made available for the different points claimed. At the time of application, applicants must submit the required information to our public reference room, and place it in a file available locally. The Commission's staff will examine these documents in random audits and as described infra. This information will also assist parties in determining whether it is appropriate to file Petitions to Deny. Future applicants will submit documentation concurrently with filing.

90. We will examine each applicant's claimed points to determine the tentative selectee(s). Once we select our tentative selectee(s), we will conduct an acceptability study for the selected application(s). If a tentatively selected application is found unacceptable, it will be returned to the applicant. As under our existing standards for NCE stations, the applicant will be given one opportunity to submit a curative amendment, provided that the amendment is minor and that the application, as amended, has the same number of qualitative points as originally claimed, or more than the points claimed by the next highest applicant. An applicant that does not meet acceptability requirements after this opportunity will be removed from the mutually exclusive group and will not be

provided an additional opportunity to amend. This applicant may not apply for a station until the next filing window. A new tentative selectee will be chosen from the remaining applicants according to the point system. We thus caution applicants to take great care in preparing their applications. Once a tentative selectee's application is found acceptable we will announce that fact in a public notice, which would establish a due date for Petitions to Deny against the tentative selectee. See 47 C.F.R. § 73.3584.

4. Amendment of Pending Applications to Claim Points

91. All mutually exclusive NCE proposals, including any previously filed and/or designated for hearing will be evaluated by the point system. Mutually exclusive NCE applications already on file do not, however, contain the information that the Commission will need to make a selection under a point system. These existing applicants will be required to supplement their applications to make those applications consistent with the standards adopted.⁶⁸ We delegate authority to the staff to issue public notices announcing the procedures to be used in this process.

5. Holding Period

92. In the Further Notice we asked about steps that we could take to ensure that our selection process is meaningful and not undermined by the rapid re-assignment or transfer of stations. We proposed to implement a holding period for NCE stations granted on a comparative basis, as a means of protecting the integrity of these grants. The Further Notice did not propose a specific length for a holding period, but discussed three and five year periods of on-air operations as possibilities. A few commenters, such as Community Television, Inc., think that a holding period is not necessary because frequent turnover of stations is not a problem in NCE radio, unlike commercial broadcasting. Most of the commenters, however, agree that NCE licensees should be required to hold stations for some minimum period of time. The commenters differ on the amount of time that they believe is an adequate holding period, but most suggest either three, five, or eight years.

93. We believe that if applicants are to be selected on the basis of their different characteristics, those characteristics should be maintained for a minimum period to be meaningful. We also believe that a holding period will limit speculation that might accompany reliance on a point system. We have chosen a four-year holding period of on-air operations because it is one which we think is sufficient to establish meaningful service for the community without any undue burden on the licensee.⁶⁹ This will generally begin

⁶⁸ Where the relevant period for filing competing applications has closed, we will not reopen the filing period for additional competing applications.

⁶⁹ Prior to elimination of our anti-trafficking policy, we had a three year holding period on commercial broadcast licenses. See Elimination of Three Year Rule and Underlying Anti-Trafficking Policy, 52 RR 2d 1081 (1982), reconsidered in part, 99 FCC 2d 971 (1985). The Bechtel court questioned whether a three year holding period would have been sufficient to give meaning to the commercial integration credit given the Commission's expectation that successful applicants adhere to their integration proposals on a permanent basis. But, as we noted

at the time of program tests. Four years is one half of the current eight year license period. Within a four year period, a new station would generally have established and implemented its educational programs, received feedback from the public it serves and the underwriters from which it is seeking financial support, and adjusted its programming accordingly. Thus, a four year holding period will apply to applicants selected through a point system. We do not adopt a holding period on assignments or transfers for licensees receiving no such points (such as non-mutually exclusive applicants, or licenses awarded through settlement), or for permits awarded through decisive Section 307(b) preferences. We direct the staff to modify the requisite assignment and transfer forms to reflect the holding period restrictions.

94. One commenter suggests that, to deter speculative applications, we should randomly audit the applicants within the holding period to see that they are maintaining the factors for which they received points.⁷⁰ We will adopt this suggestion and conduct random audits during the holding period, instead of our original proposal which would have required prevailing applicants to certify annually to their continued eligibility for the points they received. This will ensure that applicants are maintaining the factors for which points were awarded, without imposing reporting requirements on the applicants. Some factors will be maintained by conditions on the license itself. For example, we will condition permits on construction as proposed (or in the event of an involuntary loss of site, on replacement with an equivalent coverage of area and population). During the holding period, we will consider complaints alleging that the permittee is not operating pursuant to a proposal for which it received points, and take appropriate enforcement action.

95. We recognized in the Further Notice that circumstances may arise requiring some applicants to assign or to transfer control of a station before the end of the holding period, and asked how to address such circumstances. One option presented was to limit the permittee to recovery of its reasonable and prudent expenses. We asked commenters favoring this solution to address how to define reasonable and prudent expenses in the context of an operational station. We also asked for any other ways to address this issue.

96. Commenters such as Kaleidoscope Foundation would support limiting any licensee that transfers the station before the end of the holding period, to recovery of its reasonable and prudent expenses.⁷¹ The Center for Media Education states that gradual changes in the composition of the board, which commenters view as inevitable, should not be considered violations of the holding period, provided that the licensee maintains the

in the Further Notice, the court's reasoning was based on considerations that are not applicable to the NCE service. Further Notice at note 29 citing Bechtel v. FCC, 10 F.3d at 880.

⁷⁰ Comments of Dale Jackson at 7-8.

⁷¹ E.g. Comments of Kaleidoscope Foundation, Inc. at 4-5.

factors for which it received points. Commenters agree that reasonable expenses would include those associated with the application and construction. They differ on whether to include expenses for operating the station. Cedarville College says that such expenses should be reimbursable to the extent that operating costs are not offset by the station's or licensee's income. Station Resource Group argues that we should not allow recoupment of operating costs or of compensation to board members because these are not capital expenditures. Faith Broadcasting and Moody Bible Institute of Chicago believe that NCE applicants who experience difficulties during the holding period should be allowed to donate the station to another nonprofit organization for no consideration. Sound of Life argues that the station should go to the next applicant in the queue.

97. We have decided that from the grant of the construction permit through the four year holding period, NCE entities who must assign or transfer their permit or license will be limited to recovery of their legitimate and prudent expenses. We conclude that "legitimate and prudent expenses" as relevant here will include the costs of obtaining the permit and constructing the station, but will not include costs of station operations. To further ensure that the public receives the benefits to which it is entitled, during the holding period a proposed assignee of such a station will be required to demonstrate that it would qualify for the same or a greater number of points as the assignor originally received. We do not favor the suggestion that the licensee donate the station to any other non-profit organization of its choice, without regard to how well qualified that organization may be. This would not maximize the benefits that the point system is intended to achieve.

98. We generally agree with commenters that gradual changes in the board, of the type that ordinarily occurs in most NCE organizations, will not for purposes of a holding period be treated as the equivalent of a sudden transfer of control or assignment. Nevertheless, we note that we have adopted several point factors that are board dependent, including diversity of ownership and localism. Such factors must be maintained despite board turnover. To address inevitable changes in board composition, we will award diversity and localism preferences only to organizations whose own governing documents ensure that these factors are preserved despite Board changes (e.g. whether existing and incoming board members can have other media interests and whether outgoing board members will be replaced with others who are similarly representative of the community).

G. FM Translators Operating on Reserved Channels

99. Translators are secondary stations that rebroadcast the signals of primary stations. Generally translators operate in areas where reception of the primary station would otherwise be poor. The Further Notice asked whether the same point system and procedures used for NCE primary stations should apply to NCE-FM translator stations operating on reserved channels. The Further Notice did not ask about television translator stations on reserved channels because there are no channels reserved for noncommercial television translators. We asked whether our new selection method should maintain any of the selection preferences in the current translator rule, 47 C.F.R. § 74.1233. We noted

in particular that our rules currently favor "fill-in" translators, which fill in gaps in a primary NCE station's service area, over "other area" translators, which extend a primary NCE station's signal beyond its service area. We also noted that our current translator rules use a first come, first served approach as a tie breaker.

100. Only two commenters addressed this issue in any depth. Alaska Public Telecommunications suggests that we maintain all of the current translator selection procedures without change. NPR suggests that we first examine translator applications as to fill-in/other area status, as we do currently, and apply a point system only if fill-in status is not dispositive. We will adopt NPR's suggestion. As in the current translator selection method, if there are any fill-in proposals, only those would be eligible for further consideration. Thus, if there is only one fill-in translator among the applications filed during the filing window, the permit will be awarded to that station. If there are multiple fill-in proposals to be compared, or if no applicant proposes fill-in service, we will apply the same point system as discussed above for full service NCE stations. As a tie breaker of last resort, however, we will retain the first come, first served method currently in our rules for NCE-FM translator tie breakers, rather than switching to the mandatory timesharing adopted for full service stations. We indicated in the Further Notice, that we were more inclined to adopt a first come, first served tie breaker for translators than for full service stations because we did not anticipate the same rush to file for translator stations. There was no significant discussion of this issue, and we continue to believe that a filing rush is unlikely for FM translator stations, which lack several advantages of full service stations, including interference protection from other full service stations and the authority to originate, rather than rebroadcast, programming.

H. Noncommercial Educational Applicants on "Commercial" Channels

101. Perhaps the most difficult question posed in this proceeding concerns NCE use of frequencies that are not specifically reserved for NCE use. In the past, NCE and commercial applicants were both able to compete for this spectrum under the rules applicable to commercial applicants. For example, NCE radio applicants on non-reserved radio channels had to meet the stricter engineering requirements applicable to commercial stations. When noncommercial educational applicants competed with commercial applicants for commercially available channels, they were all compared in a hearing using the standards applicable to commercial applicants. Given changes that have occurred in the commercial selection process, we must decide whether noncommercial educational entities can continue to compete with commercial applicants on non-reserved channels and, if so, how to select among competing commercial and noncommercial applicants.

102. The Balanced Budget Act generally requires that the Commission award licenses and permits through a system of competitive bidding if mutually exclusive applications are accepted for any initial license or construction permit. 47 U.S.C. § 309(j)(1). There are a few limited exceptions to the auction requirement, however. 47 U.S.C. § 309(j)(2). The exception relevant here, 47 U.S.C. § 309(j)(2)(C), states that auctions "shall not apply to

licenses or construction permits issued by the Commission ... for stations described in section 397(6)" of the Communications Act. Section 397(6) defines the terms "noncommercial educational broadcast station" and "public broadcast station."⁷² In the Further Notice, we observed that some parties construed the statutory language as limited in scope, merely indicating that auctions cannot be used on channels reserved for NCE use. Others, however, believed the language to have broader implications, requiring the Commission to design new non-auction procedures for use whenever an NCE applicant applies for a non-reserved channel. We did not find the legislative history to provide clarification. The Further Notice requested additional comment on this issue, and on whether NCE entities should remain eligible to compete for non-reserved channels.

1. Statutory Construction

103. The comments filed in response to the Further Notice continue to offer different interpretations of Section 309(j)(2)(C), and whether it pertains to applications by NCE entities for non-reserved channels. Generally, NCE organizations read the statute to always exempt NCE entities from auction, and commercial applicants read it as exempting only those channels reserved for NCE use. NCE entities argue that the statutory exception to auctions clearly is based on the applicants' eligibility to construct an NCE station and not on the particular channel for which the entity is applying. Thus, they maintain that NCE applicants are equally exempt from auctions on non-reserved channels as on reserved channels. As support for this position, NPR notes that the original House and Senate bills, which were not enacted, would have limited the auctions exception to reserved channels, but that this language was eliminated in the conference committee.⁷³ It argues that when Congress includes limiting language in an earlier version of a bill, but deletes it prior to enactment, it may be presumed that the limitation was not intended. Russello v. U.S., 464 U.S. 16, 23-24 (1983). The commenters also supply various reasons why Congress could have intended NCE entities always to be exempt from auction. For example, they say that substantial public monies support NCE broadcasting, and that an NCE organization would have little hope of prevailing in an auction against a commercial enterprise.

104. NCE commenters particularly oppose the statement in the Further Notice that, if we read the language as an absolute exemption of NCE stations from auction, NCE entities

⁷² The terms "noncommercial educational broadcast station" and "public broadcast station" mean a television or radio broadcast station which (A) under the rules and regulations of the Commission in effect on the effective date of this paragraph, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or (B) is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes. 47 U.S.C. § 397(6).

⁷³ S. 947, 105th Cong., 1st Sess., § 3001(a)(1)(not enacted); H.R. 2015, 105th Cong., 1st Sess., § 3301(a)(1) (enacted as amended).

may become disqualified from competing for non-reserved channels. Commenters say that non-reserved channels are important to NCE organizations, and that they operate on non-reserved channels for various reasons. These reasons include TV Channel 6 interference to certain reserved FM channels, interference by foreign stations, historic use of AM stations by NCE radio pioneers, historic use of VHF channels for wide area geographic coverage to fulfill statewide plans, donation of stations on non-reserved channels from commercial broadcasters to NCE entities, purchase of stations from commercial broadcasters, and vacant non-reserved allotments.⁷⁴ As an indication of the importance of non-reserved channels to NCE entities, NPR and APTS report that 37 of their members operate on non-reserved FM channels, 20 on non-reserved AM channels, and 15 on non-reserved TV channels. With respect to translators they say that many NCE-FM translators are on the non-reserved band, including 12 of Minnesota Public Radio's 18 translators, and that all TV translators operate on non-reserved channels because there are no TV channels reserved for educational translators.

105. In marked contrast, commercial applicants believe that Congress' clear intent was to mandate auctions on all non-reserved channels to balance the budget, and that the NCE language was meant only to clarify that reserved NCE channels are not to be auctioned.⁷⁵ DeLaHunt Broadcasting and Big Sky Broadcasting say that applying the auction exemption in Section 309(j)(2)(C) to non-reserved channels would subvert the statute's intent to balance the budget by overriding auctions every time an NCE entity applies for channels that could also be used commercially. As these commenters read the language of the Act, it is the nature of the allotment, and not the nature of the particular applicant, that determines whether auctions should be used. They maintain that non-reserved channels are allotted for commercial use and that a decision to program a station on these channels with noncommercial educational material amounts to a choice of program format. Thus, they say that each applicant on a non-reserved channel chooses between a commercial or noncommercial format on a channel that is allotted for commercial use. They therefore maintain that nonreserved channels are always subject to auction, regardless of the voluntary program choices that applicants may propose.

106. After considering the comments and reviewing the statute, we conclude that the exemption of NCE applicants from our general mandatory auction authority does not prohibit us from auctioning non-reserved channels, even when NCE entities apply for those channels. Section 309(j) contains conflicting statutory directives. On the one hand, it directs the Commission to grant licenses and permits by a system of competitive bidding when mutually exclusive applications are filed, and to design a system of competitive bidding that recovers for the public "a portion of the value of the public spectrum resource

⁷⁴ Comments of University of California.

⁷⁵ E.g., Comments of Jack I. Gartner at 2-3.

made available for commercial use. . . .⁷⁶ On the other hand, it exempts from competitive bidding licenses or construction permits issued by the Commission “for stations described in section 397(6) of the Act.”⁷⁷ These provisions do not conflict with respect to the allocation of reserved channels or with respect to the allocation of non-reserved channels for which only commercial applicants apply. In the first instance, an auction is prohibited, while in the second it is mandated. But neither the statute nor the Conference Report provide us with any guidance on how we should award authorizations when NCE applicants file mutually exclusive applications for channels that are made available for commercial use.⁷⁸ Since Congress has not “directly spoken to the precise question at issue,”⁷⁹ we construe Section 309(j) in the manner that we believe best reconciles its conflicting directives: to exempt NCE applicants for reserved channels from auctions, and to auction all channels made available for commercial use, even if NCE entities choose to apply for those channels.

107. Section 309(j)(3) of the Act provides that “in identifying classes of licenses and permits to be issued by competitive bidding . . . and in designing the methodologies, . . . the Commission shall include safeguards to protect the public interest in the use of the

⁷⁶ 47 U.S.C. § 309(j)(1) and (j)(3)(C).

⁷⁷ 47 U.S.C. § 309(j)(2)(C).

⁷⁸ We acknowledge that H.R. 2015, which was later amended in the Conference Committee and adopted as the Balanced Budget Act of 1997, initially had an exemption for “public telecommunications services, as defined in section 397(14) of the Communications Act of 1934 (47 U.S.C. 397(14)), when the license application is for channels reserved for noncommercial use.” See H.R. Rep. 105-149, 105th Cong., 1st Sess., Section 3301(a)(1)(A) (1997). National Public Radio argues that the fact that the Conference Committee did not adopt the clause limiting the exemption to reserved channels reflects an intent that the exemption extend to non-reserved as well as reserved channels. Comments of National Public Radio at 32. While we are mindful of the canon of statutory construction relied upon by National Public Radio, we do not find it decisive in this instance because the exemption that was originally proposed in the House bill was quite different from the exemption that was ultimately adopted. As is apparent from the exemption quoted above, the House bill incorporated by reference the definition of “public telecommunications services,” as defined in section 397(14) of the Act, while the exemption that was enacted as part of Section 309(j) incorporates by reference the definition of “noncommercial educational broadcast station” and “public broadcast station” set forth in Section 397(6) of the Act. See 47 U.S.C. § 397(6). Since the Commission does not license “public telecommunications services,” that term does not seem an appropriate term to use in the Section 309(j) exemption, and the House may have added the reference to reserved channels in an attempt to tie the definition of “public telecommunications services” to the Commission’s licensing authority. When the Conference Committee completely changed the wording of the exemption to rely on the more appropriate definition in Section 397(6), it may have found it unnecessary to add the additional clause because the Commission does license noncommercial educational broadcast stations, so the link between the exemption and the Commission’s licensing authority is apparent. Thus, under these circumstances, we do not believe that the deletion of the clause in question reflects a Congressional intent to expand the exemption to channels made available for commercial use.

⁷⁹ See *Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984).

spectrum." 47 U.S.C. § 309(j)(3).⁸⁰ One of the enumerated public interest objectives included in this section of the statute is "recovery for the public of a portion of the value of the public resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource." 47 U.S.C. § 309(j)(3)(C)(emphasis added). This provision makes it clear that the Commission is charged with designing competitive procedures that recover the value of spectrum made "available" for commercial use, regardless of who applies for it. A reading of 47 U.S.C. § 309(j)(2)(C) which permits NCE applicants to exercise "a right of first refusal" over commercial spectrum otherwise subject to auction would severely limit, if not defeat, our ability to meet this objective when an NCE entity applies for a non-reserved channel. It is an elementary canon of statutory construction that a statute should be interpreted so as not to render one part inoperative. Mountain States Telephone & Telegraph Co. v. Pueblo of Santa Ana, 472 U.S. 237 (1985).

108. As commenters note, the decision to operate noncommercially on the non-reserved channels is a voluntary choice on the part of the applicant, not a Commission requirement. Furthermore, it is a choice that is easily undone from a regulatory standpoint. If an applicant asks the Commission to designate its non-reserved permit or license as noncommercial educational, we will generally do so, provided that the applicant demonstrates NCE eligibility and consents to operate the non-reserved channel station in a noncommercial educational manner. If the station determines at any time that it wishes to operate commercially, however, it can simply file FCC Form 302, to voluntarily change the nature of its station and its regulatory status back to commercial again. Similarly, if one of these non-reserved channel stations is sold to another party, the new party can elect whether the station will be operated on a commercial or noncommercial basis.⁸¹ Even an applicant indicating in its initial application that it wants to be licensed as noncommercial could amend that application at any time to propose commercial operations. In this manner, stations operating on non-reserved channels differ greatly from those operating on reserved NCE channels, which are not made available for commercial use. Noncommercial educational operation is mandated and permanent on the reserved channels, not voluntary and temporary as on the non-reserved channels.

109. Given the relative ease with which broadcasters choosing to operate on commercially available channels can both obtain and discard "NCE" status, we can not conclude that Congress intended to limit the "recovery for the public of a portion of the value of the [spectrum] . . . available for commercial use" to the proceeds from the auction of only those frequencies that NCE applicants do not want. Such a broad interpretation of Section 309(j)(2)(C) would seem to contravene apparent congressional intent to limit the

⁸⁰ This is pre-existing auctions language that Congress, in the Balanced Budget Act, left unchanged.

⁸¹ See WNYC Communications Group, 11 FCC Rcd 13841, 13843 (Mass Media Bur. 1996).

situations in which licenses are awarded by comparative hearings, as reflected in our expanded auction authority. Interpretation of the language in such a manner would also create a statutory conundrum. Except for a select group of applications filed before July 1, 1997, the Commission is required to use auctions to award commercial broadcast licenses, when mutually exclusive applications are filed. Auctions would be precluded, however, under a broad reading of Section 309(j)(2)(C) whenever any one of the competing applicants for a station in the non-reserved band is a noncommercial educational entity. How the Commission is to resolve this dilemma is not spelled out in the statute or in the legislative history. If Congress had intended to exempt from our auction authority all licenses for noncommercial stations (whether authorized on the reserved or on the non-reserved channels), we believe that it would have done so explicitly, and that it would have also prescribed procedures for the Commission to follow when both commercial and noncommercial entities file applications for a non-reserved channel. But Congress did neither. This reinforces our conclusion that, consistent with our expanded auction authority generally and the public interest objectives enumerated in Section 309(j)(3)(C), Congress intended the exemption specified in Section 309(j)(2)(C) to apply only on the reserved band. We thus consider Section 309(j)(2)(C) of the statute as a direction that the Commission identify NCE stations as exempt from auctions for reserved noncommercial channels but not for non-reserved channels that are also available to commercial broadcasters.

110. Our interpretation of the statute in the manner described reaches a result consistent with our decision in a case in which we interpreted a similar public safety exception from mandatory competitive bidding. See Order on Reconsideration of the Second Report and Order, Automatic Vehicle Monitoring Systems, PR Docket No. 93-61, 14 FCC Rcd 1339 (1999) (interpreting 47 U.S.C. §309(j)(2)(A)). We determined there that the applicant's voluntary intention to use a channel for public safety purposes did not bring the applicant under the auction exception, when that channel could also be used commercially. That case involved a wireless service called the Location and Monitoring Service (LMS), which is used for automatic vehicle monitoring. Like the dual use non-reserved broadcast channels at issue here, the LMS service can be used for a variety of purposes, some of which are related to public safety, and others of which are commercial. An applicant who intended to use an LMS frequency to locate emergency vehicles such as ambulances and police cars maintained that the statute prohibited the Commission from auctioning the right to use an LMS channel any time that an applicant proposed to use the channel for public safety purposes. We rejected this argument, stating that we must look beyond a particular applicant's intended use of the channel, to how the channels are allocated. Automatic Vehicle Monitoring, 14 FCC Rcd at 1343. Because the LMS was not allocated by the Commission as a public safety service, we found that the exemption from mandatory auction did not apply. Similarly, non-reserved channels are not allocated solely for noncommercial educational stations, and the nature of the allocation determines whether they are subject to competitive bidding.⁸²

⁸² We observe that the facts of the LMS case are not identical to the current situation. For example, the LMS

111. We thus conclude that applications to construct noncommercial educational stations are exempt from auctions if the proposed station will operate on a channel that is reserved for NCE use. Mutually exclusive applications for new broadcast stations on channels available for commercial use, *i.e.* stations whose commercial or noncommercial nature can be changed voluntarily at the applicant's option, will be auctioned regardless of whether one or more of the applicants is eligible to use reserved channels. Such auctions will, in general, be conducted using our newly established auction rules.

2. Reserving Additional Spectrum for NCE Use

112. To mitigate any potential hardship that the auction process might impose on noncommercial entities, we discussed in the Further Notice the possibility of facilitating the reservation process. Currently, NCE applicants can file a Petition for Rule Making requesting a reallocation of a channel from non-reserved to reserved only if they demonstrate that they are precluded from using reserved channels due to such channels' receipt of interference from TV Channel 6 or foreign stations. The Further Notice suggested that we also allow spectrum to be reallocated for NCE use if (a) the NCE entities would be precluded from serving their proposed communities of license using reserved channels by existing reserved channel stations or pending applications; and (b) the proposed allotment would provide the first or second NCE aural or video service received in the community. We asked whether such a reallocation would be sufficient to meet the public's need for NCE service. Pensacola Christian College proposes that we allow reallocation if there is no reserved channel available and no interference to other stations. Faith Broadcasting and Houston Christian Broadcasting suggest that the channel be reallocated if no reserved channels are available that would allow an NCE station to serve the community to which a non-reserved channel is assigned, with a 70 dbu service contour. Minnesota Public Radio proposes that the Commission make TV Channel 6 available to NCE stations when these stations move to digital channels.

113. However, several commenters object to a relaxed reservation approach. Elgin FM, a commercial broadcaster, states that additional NCE reservations are not fair to commercial broadcasters that are also competing for scarce spectrum. The University of Arizona says that although reserving additional spectrum at the allocations stage is a good idea for future applications, it does not address applications already on file. According to the University of Arizona, some pending applications are seeking the last frequencies available in an area, so a future ability to reserve another frequency will not help. To address this situation, it suggests a needs test that would apply to pending proceedings,

applicant did not raise its public safety argument until the reconsideration stage of a rule making, after the LMS service had been found auctionable, whereas the current NCE question was raised in a more timely manner. Nevertheless, the Commission in that case addressed a similar question involving a related section of the statute.

based on the number of existing NCE stations in relation to commercial stations.⁸³

(a) Future NCE Allocations (non-reserved channels)

114. Upon consideration of the comments, we have decided, for future FM and television applicants, to expand opportunities to allocate channels from non-reserved to reserved. In addition to considering TV channel 6 (radio only) and foreign station interference (radio only), we will also adopt a needs test for future rule making requests which ask that non-reserved channels not already in the Table of Allotments be added and reserved for NCE use. For these future allocations requests, an NCE entity can show that the need for an NCE station is greater than the need for a commercial station. An NCE proponent could so demonstrate by showing that:

(A) the NCE radio proponent is technically precluded from using the reserved band by existing stations or previously filed applications or an NCE television proponent shows that there is no reserved channel assigned to the community; and

(B) the NCE proponent would provide a first or second radio or television NCE service to 10% of the population within the proposed allocation's 60 dBu (1 mV/m) service contour (radio) or Grade B contour (TV).⁸⁴ New NCE service to fewer than 2,000 people would be considered insignificant for purposes of this determination.

While we recognize that commercial broadcast applicants may also have limited spectrum available to them, we nevertheless believe that NCE applicants should have the opportunity to rebalance the commercial/noncommercial channel mix of FM and TV channels if they can demonstrate that there is a greater need for noncommercial service in an area. We adopt a limited expansion of existing policy today, and can evaluate the sufficiency of this limited change in the future if necessary.⁸⁵ We will not, however, apply

⁸³ University of Arizona, et al., suggests a five pronged tests for determining whether NCE needs exceed commercial needs. NCE needs would be demonstrated by (1) first or second service; (2) ratio of NCE radio to commercial radio less than 20%; (3) ratio of NCE television to commercial television less than 33%, (4) technical reasons for lack of radio coverage, e.g. TV channel 6 and terrain obstructions; and (5) technical reason for lack of television coverage in top 100 TV markets. Comments of University of Arizona, et al. at 9-10.

⁸⁴ We assume that there would likely already be a first or second commercial service received in the area. In the unlikely event of an NCE applicant seeking reservation of nonreserved spectrum in an area not already served by two commercial channels, we delegate to the staff to consider on a case-by-case basis, whether commercial or NCE service is most needed.

⁸⁵ Thus, we will not adopt at this time more expansive changes to our policies, such as establishing set ratios of noncommercial stations, as the University of Arizona suggests.

this analysis to AM channels. AM is a mature service, already quite crowded, and in which little spectrum is available. No AM stations are reserved for NCE use. The Commission's creation of an AM expanded band, to which some existing commercial stations will migrate, will relieve, but not eliminate, existing AM interference issues. Thus, we do not anticipate establishing reserved NCE stations on the AM band.

115. If an NCE applicant demonstrates a greater need for NCE service than for commercial service under this test, the channel will be allocated as reserved, and only NCE applicants could apply to use the channel in the next application filing window. NCE applicants would then compete for the channel pursuant to the point system described above. The NCE station permit awarded would be for NCE use only, and could not be voluntarily switched to a commercial station by later application. If a greater need for NCE service is not demonstrated, however, and a channel thus remains available for commercial use, we would conduct an auction among the applicants and NCE applicants would be eligible to participate. As the prevailing applicant in such an auction would be awarded a permit for a commercial channel, the station could be programmed with either a commercial or noncommercial format. As under current practice, the permittee would have the option to voluntarily request that the station be licensed as NCE instead, as well as the option to voluntarily request a change back to commercial if it so desired. We will not establish bidding credits for NCE stations in such auctions, in view of the commercial nature of the non-reserved channels. We also note the lack of any supporting comments in response to the Further Notice's discussion of NCE bidding credits. Those NCE applicants, as well as non-NCE applicants, that are eligible for our new entrant auction credit will, of course, be able to claim that credit. See Competitive Bidding supra.

3. Existing Applications

116. As indicated above, the University of Arizona is concerned that easier allocation of spectrum in the future will not help existing NCE applicants who already have filed applications to use commercially available channels. The University of Arizona suggests that we apply a needs test to existing proceedings similar to that adopted for future proceedings. We have considered, but have decided not to adopt, this suggestion. We currently have approximately 250 applications in which commercial and noncommercial educational applicants are competing for approximately 45 channels which were commercially available at the time of application.⁸⁶ The nature of each such channel has been considered previously in a rule making proceeding and, after the opportunity for public comment, was identified as commercially available in the table of allotments in our rules. Both commercial entities and noncommercial entities that applied for those

⁸⁶ As of March 2000 there were 39 radio proceedings affecting 220 applicants in which NCE applicants are competing with commercial applicants for non-reserved channels. (33 FM proceedings and 6 FM translator proceedings). In the same period, there were five television proceedings affecting 22 applicants in which NCE and commercial television entities were competing for non-reserved channels.

channels did so with full knowledge that their applications would be considered under commercial standards.

117. It is in accord with the original expectations of all applicants to require NCE applicants to "play by commercial rules" as anticipated, even if that means participating in auctions. Accordingly, as in the Competitive Bidding proceeding, existing applications for commercially available channels will be resolved by auction. We recognize that, due to funding concerns, many NCE applicants may be unable to participate or prevail in an auction. We would encourage such applicants to use the new needs test discussed above to initiate rule making proceedings to allocate other channels exclusively for NCE use.

118. Applicants with pending applications for nonreserved channels may wish to settle prior to auction. Pursuant to our existing rules, settlement will be permitted provided that consideration does not exceed the settling applicant's reasonable and prudent expenses (including, for a commercial applicant, any fees paid to the Commission). A final date for settlement will be announced in a public notice, establishing auction dates. Applicants voluntarily dismissing their applications, for reasons other than settlement, may request a refund of fees from the Commission.

I. Conclusion

119. We will use a point system to select among competing applicants for reserved channels and will hold auctions to select among applicants for nonreserved channels. The nature of the channel (reserved or nonreserved) will govern, not the commercial or noncommercial nature of the individual applicants. We conclude that this method is consistent with the intent of the Balanced Budget Act, which exempted noncommercial educational stations from auction, while requiring auctions for commercial stations, and with other sections of the Communications Act, which require the Commission to recover the value of spectrum made available for commercial use. In recognition, however, of the possibility of a compelling need for NCE service in a particular area that may arise on a case-by-case basis, and the potential limited financial resources of NCE entities who may wish to serve such an area, we provide a new mechanism for noncommercial applicants to request allocation of additional (currently non-reserved) spectrum as reserved.

IV. Administrative Matters

A. Application Form

120. We intend to modify the Application to Construct a Noncommercial Educational Broadcast Station (FCC Form 340), to reflect the information required to apply a point system as well as the other changes adopted in this Report and Order. We direct the Mass Media Bureau to make the necessary modifications to the form to reflect these changes for future applications and to fashion a form or other method to receive information from pending applicants who filed on the existing form.

B. Filing Freeze

121. To facilitate a smooth transition from the A/B cutoff filing method to the window filing system, and transition from comparative hearings to point systems, we will implement a filing freeze on applications for new NCE TV, FM, and FM translator stations and for major changes to such existing NCE stations operating on reserved channels. From the release of this Report and Order we will only accept reserved channel NCE applications if they are filed in response to "A" cutoff notices that have already been issued and for which the deadline for filing "B" applications has not yet occurred. Other new and major change applications for reserved NCE channels must await the opening of an NCE filing window. Any applications filed before release of this Report and Order, for which "A" cutoff public notices have not yet issued, will be included in the first educational window opened for new applications in the relevant service. The filing freeze is limited to reserved NCE channels. There is a similar freeze in place on non-reserved channels, while the Commission transitions to an auction environment for those channels. Should the staff lift the freeze on non-reserved channels prior to lifting the freeze on reserved channels, NCE applicants will have the option at that time to apply for non-reserved channels, subject to their participation in any auctions that may result consistent with the policies and regulations established herein.

V. PROCEDURAL MATTERS AND ORDERING CLAUSES

122. Paperwork Reduction Act of 1995 Analysis. This Report and Order contains either new or modified information collections. Therefore, the Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due 60 days from the date of publication of this Report and Order in the Federal Register. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1C1804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov and to Virginia Huth, OMB Desk Officer, 725 17th Street, N.W., Room 10236, NEOB, Washington, DC 20503 or via the Internet to: VHuth@omb.eop.gov.

123. For additional information concerning the information collections contained in this Report and Order contact Judy Boley at 202-418-0217.

124. **Final Regulatory Flexibility Analysis.** The Final Regulatory Flexibility Analysis, pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 601 et seq., is attached as Appendix C.

125. Accordingly, IT IS ORDERED, that pursuant to the authority of Sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j), 309(l), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j), 309(l), and 403, this Report and Order IS ADOPTED, and Parts 73 and 74 of the Commission's Rules ARE AMENDED as set forth in Appendix D below.

126. IT IS FURTHER ORDERED that, pursuant to the Contract with America Advancement Act of 1996, the rule amendments set forth in Appendix D SHALL BE EFFECTIVE 60 days following publication in the Federal Register.

127. IT IS FURTHER ORDERED that, effective upon release of this Report and Order and continuing until the opening of filing windows for NCE stations, the Commission shall not accept applications for new and major changes to NCE stations on reserved channels, except for applications filed in response to previously announced A cutoff periods that have not yet closed.

128. IT IS FURTHER ORDERED, that pursuant to 47 U.S.C. § 155(c), the Chief of the Mass Media Bureau IS DELEGATED AUTHORITY to prescribe application format and day-to-day procedures concerning the filing and processing of applications in accordance with the guidelines set forth herein.

129. IT IS FURTHER ORDERED, that any traditional comparative hearing proceedings to which a noncommercial educational applicant is a party ARE HEREBY TERMINATED.

130. IT IS FURTHER ORDERED, that the Commission's Office of Legislative Affairs SHALL SEEK an amendment to the Communications Act, 47 U.S.C. § 155(c)(1) that would permit the Commission to delegate authority to conduct review of applications pursuant to a point system to the Chief, Mass Media Bureau.

131. IT IS FURTHER ORDERED, that until such time as 47 U.S.C. § 155(c)(1) is amended, the staff is directed to refer mutually exclusive NCE applications to the Commission to apply the point system procedures established herein to applications for broadcast construction permits.

132. IT IS FURTHER ORDERED, that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

133. IT IS FURTHER ORDERED, that the new or modified information collection contained in this Report and Order are subject to approval by the Office of Management and Budget and will become effective 60 days after OMB approval, unless a notice is published in the Federal Register stating otherwise.

134. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

135. For additional information concerning this proceeding, contact Irene Bleiweiss, Mass Media Bureau, Audio Services Division, (202) 418-2780.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary